IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9862 of 1992

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARENDRASINH P ZALA

Versus

MADHUPURA MARKET MAHAJAN

Appearance:

MR BA VAISHNAV for MR KV GADHIA for Petitioner

None present for Respondent

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA

Date of decision: 19/07/2002

ORAL JUDGEMENT

#. Heard Mr.B.A.Vaishnav, for Mr.K.V.Gadhia, learned counsel representing the petitioner. There is no response from the respondent despite due service.

#. The petitioner was a Watchman working with the respondent. His services were terminated with effect from 1st April, 1983.

#. The termination was challenged before the Labour Court, Ahmedabad. The Labour Court, vide its Award dated 18th February, 1992, partly allowed the claim of the petitioner by holding that his termination was unlawful, and directed his reinstatement on his original post. However, the Labour Court declined to grant benefit of backwages.

#. Feeling aggrieved by the denial of backwages, the petitioner has approached this Court invoking its jurisdiction under Article 226 of the Constitution of India.

#. The learned counsel of the petitioner submits that the Labour Court erred in denying the backwages to the petitioner inasmuch as on reinstatement of the workman, normal rule is grant of full backwages. To buttress this submission, the learned counsel places reliance upon the decision of the Hon'ble Supreme Court, rendered in M/s.Hindustan Tin Works Pvt. Ltd. V/s. The Employees of M/s.Hindustan Tin Works Pvt. Ltd. and others, reported in AIR 1979 SC at page 75.

#. In Paragraph-9 of the decision relied upon by the learned counsel of the petitioner, the Hon'ble Supreme Court has ruled thus:

> "... Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. ..."

(Note: emphasis added)

#. The Court has carefully scrutinized the pleadings set out by the petitioner in the petition, and has not been able to find any factual foundation for the plea that the petitioner was not gainfully employed during the relevant period, to be precise, during the period between the termination of his service and the date of the Award. The Court has also scrutinized the Award of the Labour Court dated 18th February, 1992. From the perusal of the Award, it transpires that the question whether the petitioner was gainfully employed or remained idle during the relevant period was neither pleaded nor canvassed. Consequently, this aspect was not investigated by the

Labour Court.

#. In the absence of any specific pleading and material in support thereof, it is not possible to hold that the petitioner was not gainfully employed during the relevant period, which is a sine qua non for grant of backwages. Thus, the claim of the petitioner for backwages cannot be upheld.

#. For what has been said above, the Court does not find any merit in the petition. It is, therefore, rejected. Rule is discharged. There is no order as to costs.

(D.S.Sinha, C.J.)

(sunil)